Under any theory the threat must be improper or there would be no reason for a defense, regardless of the amount of pressure exerted. A recent case holds that the threat of prosecution for a crime in fact committed constitutes such duress as to justify the avoidance of the contract. *Wilbur* v. *Blanchard*, 126 Pac. 1069 (Idaho). Some courts have held that since the prosecution is lawful no wrong is threatened and hence there is no duress.[17] Others, however, in accord with the principal case, have decided, it would seem correctly, that such a threat affords sufficient grounds for avoiding a contract induced thereby.[18] For although the alternative threatened, the prosecution itself, is not illegal, still such a use thereof is improper as a manifest perversion of the machinery of the criminal law to a purpose for which it was not intended.

DELEGATION OF THE TAXING POWER. — Perhaps no principle is more characteristic of our political system than the doctrine that there shall be no taxation without representation.[1] Long and bitter controversies between the people and the Crown made this a fundamental rule of English law.[2] Accordingly, after the American Revolution the states uniformly adopted constitutions which vested the taxing power primarily in legislative bodies.[3] But the refusal of Parliament to recognize the logical development of this doctrine, that only the local legislature should impose the local taxes, had been one of the chief causes of the Revolution.[4] As a logical consequence it has uniformly been held that the power to tax for local purposes and within local boundaries may be properly delegated to municipal corporations.[5] Many states have so provided in their constitutions.[6] With this exception, however, the taxing power,

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[17] Eddy *v.* Herrin, 17 Me. 338; Compton *v.* Bunker Hill Bank, 96 Ill. 301.

[18] Morse *v.* Woodworth, 155 Mass. 233, 29 N. E. 525; Hartford Fire Ins. Co. *v.* Kirkpatrick, 111 Ala. 456, 20 So. 651. These cases are readily distinguishable from the case where a settlement of a debt is made to escape civil imprisonment for the debt. Clark *v.* Turnbull, 47 N. J. L. 265. It is generally held that the doctrine of *in pari delicto* does not apply where one of the parties acted under duress. Bryant *v.* Peck and Whipple Co., 154 Mass. 460, 28 N. E. 678. See WILLISTON, WALD'S POLLOCK ON CONTRACTS, 503. *Contra*, Haynes *v.* Rudd, 102 N. Y. 372, 7 N. E. 287.

[1] See 1 COOLEY, TAXATION, 3 ed., 99; GRAY, LIMITATIONS OF THE TAXING POWER, § 534. This does not go so far as to exempt the property of women, children, and non-residents from taxation because they have no vote. See Thomas *v.* Gay, 169 U. S. 264, 276, 18 Sup. Ct. 340, 345. In the District of Columbia, also, the exclusive power of Congress includes the power to tax. Parsons *v.* District of Columbia, 170 U. S. 45, 18 Sup. Ct. 521; Bowman *v.* Ross, 167 U. S. 548, 17 Sup. Ct. 966.

[2] Bate's Case, 2 Cobbett's State Trials, 371; Hampden's Case, 3 Cobbett's State Trials, 825.

[3] For a collection of these provisions see GRAY, LIMITATIONS OF THE TAXING POWER, §§ 583–615.

[4] See 1 COOLEY, TAXATION, 3 ed., 96.

[5] See Vallelly *v.* Board of Park Commissioners, 16 N. D. 25, 32, 111 N. W. 615, 618; State *v.* Mayor, etc. of Des Moines, 103 Ia. 76, 82, 72 N. W. 639, 641.

[6] The following constitutions, for example, provide that the power may be delegated to "corporate authorities": Cal., Colo., Idaho, Ill., Mo., Mont., Neb., S. C., S. D., Utah, Wash., W. Va. See GRAY, LIMITATIONS OF THE TAXING POWER, §§ 560–563 *a*. Several states have also provided in their constitutions that questions of taxation may

since it is entrusted to the legislature in its fiduciary capacity as the representative of the people, cannot be delegated.[7] Of course the legislature may leave purely ministerial duties incident to levying and collecting taxes to an executive officer or commission. It need only prescribe the rule by which the tax is to be assessed and the circumstances under which it is to be gathered.[8] Thus a federal revenue act which allowed the President under fixed conditions to suspend its provisions for the free importation of certain articles, and named the duties to be levied thereon during such suspension, was held not to involve a delegation of legislative authority.[9] Similarly a statute which provided that a foreign corporation seeking to do business in the state must pay an amount equal to that imposed by existing or future laws in the state of its origin upon foreign corporations there, has been held not to delegate the taxing power to a foreign legislature.[10] The amount of the tax to be imposed need not be specified, if the rules are given by which it can be calculated.[11] But the legislature may not fix a maximum and minimum rate and delegate to an executive commission the power to assess a tax between these limits.[12] The assessment of a betterment tax, however, according to the modern view is an administrative function.[13]

In considering to what sort of municipal corporations the taxing power may be delegated, the general principle in the absence of special constitutional provisions seems to be that the authority may be given to local bodies of a legislative character, though courts in their desire to sustain legislation have created many exceptions.[14] Thus taxing powers cannot be given to the trustees of a public library,[15] or charitable society,[16] or to a board of park,[17] police,[18] or drainage[19] commissioners who have not been elected by the community to be taxed. A recent decision upheld an act delegating such powers to the directors of a school district appointed by the courts. *Minsinger* v. *Rau*, 84 Atl. 902 (Pa.). Three of the seven judges, however, dissented, taking the sounder view that delegation to a non-elective board is not within an exception based on the doctrine that local taxes should be assessed by local representatives.[20] Probably

be submitted to a popular vote. See GRAY, LIMITATIONS OF THE TAXING POWER, §§ 545–547.

[7] Vallelly *v.* Board of Park Commissioners, *supra*; State *v.* Mayor, etc. of Des Moines, *supra*; Inhabitants of the Township of Bernards *v.* Allen, 61 N. J. L. 228, 39 Atl. 716.

[8] Terrel *v.* Wheeler, 123 N. Y. 76, 25 N. E. 329.

[9] Field *v.* Clark, 143 U. S. 649, 12 Sup. Ct. 495.

[10] People *v.* Fire Association of Philadelphia, 92 N. Y. 311; State *v.* Insurance Co. of North America, 115 Ind. 257, 17 N. E. 574.

[11] Terrel *v.* Wheeler, *supra*.

[12] State *v.* Ashbrook, 154 Mo. 375, 55 S. W. 627.

[13] Soliah *v.* Cormack, 17 N. D. 393, 117 N. W. 125; Arnold *v.* Mayor, etc. of Knoxville, 118 Tenn. 195, 90 S. W. 469. But *cf.* Parks *v.* Board of Commissioners, 61 Fed. 436; Reelfoot Lake Levee District *v.* Dawson, 97 Tenn. 151, 36 S. W. 1041.

[14] See GRAY, LIMITATIONS OF THE TAXING POWER, §§ 554, 555.

[15] State *v.* Mayor, etc. of Des Moines, *supra*.

[16] Fox *v.* Mohawk and Hudson River Humane Society, 165 N. Y. 517, 59 N. E. 353.

[17] State *v.* Leffingwell, 54 Mo. 458; People *v.* Mayor of Chicago, 51 Ill. 17; Vallelly *v.* Board of Park Commissioners, *supra*.

[18] Hinze *v.* People, 92 Ill. 406.

[19] Von Cleve *v.* Passaic Valley Sewerage Commission, 71 N. J. L. 574, 60 Atl. 214; Harward *v.* Drainage Commissioners, 51 Ill. 130.

[20] *Cf.* Willis *v.* Owen, 43 Tex. 41; McCabe *v.* Carpenter, 102 Cal. 496, 36 Pac. 836;

elected directors could exercise the power.[21] The contention of counsel, however, that the act violated the federal Constitution, seems unsound, for the federal courts will not take jurisdiction to enforce a "republican form of government." [22] Nor do they seem to regard an improper delegation of the taxing power as a violation of the Fourteenth Amendment.[23]

RIGHT TO STRIKE TO UNIONIZE THE EMPLOYMENT. — Though labor unions logically constitute combinations in restraint of trade, the modern system of business organization renders them so essential to further the proper interests of workmen that they are no longer treated, in this country at least, as illegal.[1] Any attempt to enforce demands by striking, if it does not involve a breach of contract or is not accompanied by a tort against an employer, creates no liability in his favor,[2] regardless of motive.[3]

But a strike to coerce the employer into exercising his right to discharge a workman involves the further element of an interference with the workman's right to a free market for his labor. That the workman has this right is shown in the cases giving him an action where the strike involves a tort against the employer.[4] Moreover, when a fourth party is brought into the dispute, as in the case of a secondary boycott, the invasion of the right is usually held a tort, seldom if ever justified.[5] In every case, since the invasion of the workman's right by the right of the union member to quit work has injured the workman, it should be treated as a *primâ facie* tort, with the burden upon the union member to show that his right should prevail.[6]

Where, however, no fourth party is involved, the tort may often be justifiable. Thus a strike may be called without liability to procure the discharge of a fellow workman whose system of labor or incompetency prejudices [7] or endangers [8] the strikers. It is also within the limits of

Schultes *v.* Eberly, 82 Ala. 242, 2 So. 345. The effect of these authorities is weakened by special constitutional provisions in the respective states. But see Vallelly *v.* Board of Park Commissioners, 16 N. D. 25, 32, 111 N. W. 615, 618; State *v.* Mayor, etc. of Des Moines, 103 Ia. 76, 82, 72 N. W. 639, 641, and note the emphasis placed by the courts upon the fact that these boards were not elected by the people to be taxed.

[21] See Vallelly *v.* Board of Park Commissioners, *supra*.

[22] Pacific States Tel. & Tel. Co. *v.* Oregon, 223 U. S. 118, 32 Sup. Ct. 224.

[23] *Cf.* Soliah *v.* Heskin, 222 U. S. 522, 32 Sup. Ct. 103; Fallbrook Irrigation District *v.* Broadley, 164 U. S. 112, 17 Sup. Ct. 56.

[1] See 25 HARV. L. REV. 465.

[2] Everett Waddey Co. *v.* Richmond Typographical Union, 105 Va. 188, 53 S. E. 273; Gray *v.* Building Trades Council, 91 Minn. 171, 97 N. W. 663; Karges Furniture Co. *v.* Amalgamated, etc. Union, 165 Ind. 421, 75 N. E. 877. *Contra*, Mapstrick *v.* Ramge, 9 Neb. 390, 2 N. W. 739.

[3] See COOKE, COMBINATIONS, MONOPOLIES, AND LABOR UNIONS, 2 ed., § 59. But see 18 HARV. L. REV. 411, 418.

[4] *Cf.* Hamilton-Brown Shoe Co. *v.* Saxey, 131 Mo. 212, 32 S. W. 1106; Jonas Glass Co. *v.* Glass Bottle Blowers' Association, 72 N. J. Eq. 653, 66 Atl. 953.

[5] *Cf.* Crump *v.* Commonwealth, 84 Va. 927, 6 S. E. 620; Pickett *v.* Walsh, 192 Mass. 572, 78 N. E. 753.

[6] De Minico *v.* Craig, 207 Mass. 593, 94 N. E. 317. See 20 HARV. L. REV. 253, 262.

[7] Minasian *v.* Osborne, 210 Mass. 250, 96 N. E. 1036.

[8] See Berry *v.* Donovan, 188 Mass. 353, 357, 74 N. E. 603, 605; MARTIN, MODERN LAW OF LABOR UNIONS, §§ 36, 37.